APPEAL NO. 000569

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 29, 2000. The issues at the contested case hearing were: (1) date of injury; (2) whether the respondent (claimant) sustained a compensable injury in the form of an occupational disease; (3) whether claimant timely reported her injury; and (4) disability. The hearing officer determined that: (1) the date of injury is _____; (2) claimant sustained a compensable injury; (3) claimant timely reported her injury; and (4) claimant had disability from November 3, 1999, to the date of the CCH. Appellant (carrier) appealed these determinations on sufficiency grounds. Claimant responds that the Appeals Panel should affirm the decision and order.

DECISION

We affirm.

Carrier contends that the hearing officer erred in determining that claimant sustained a compensable repetitive trauma occupational disease back injury. The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The 1989 Act defines "injury" as damage or harm to the physical structure of the body and a disease naturally resulting from the damage or harm. Section 401.011(26). The definition of "injury" includes occupational diseases. An "occupational disease" is defined as "a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body," but does not include "an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease." Section 401.011(34). To establish that he has an occupational disease, the claimant's evidence must show a causal connection between the employment and the disease. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991. Whether the necessary causation exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94266, decided April 19, 1994.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

Claimant testified that she sustained a back injury at work over the period from _____, to _____, while doing repetitive bending. Claimant said she had discomfort for a few days because she had been given shorter tables to work at, and she thought the pain would go away after she obtained taller tables. She said she told her supervisor, Ms. V, about her pain on _____, and asked for taller tables after she experienced a sharp pain on _____. In her transcribed statement, claimant said she continued to work and that, after she complained about her back problems to Ms. V, she was eventually given taller tables around October 20, 1999. Claimant said she missed a few days in October because of her son=s illness, that she returned to work on October 22, 1999, and told Ms. V that she could not be at work Monday because a nurse was coming to see her son. Claimant testified that Ms. V told her to Ago@ right then and would not allow her to explain. She said she believed she was terminated, that she called the next Monday to ask for her job back, and Ms. V said employer did not have any available machines. Claimant said she sought medical treatment for the first time on October 29, 1999, because the radio advertisement of Dr. L stated that the initial consultation was free. Medical records from Dr. L state that claimant=s diagnosis included a lumbar sprain and sciatica.

The hearing officer determined that because of repetitive bending and twisting at work, particularly from _____, to _____, claimant sustained an injury. The hearing officer assigned whatever weight he deemed appropriate to the evidence before him, including the medical evidence. He could have chosen to believe or disbelieve any part of the evidence before him. Having reviewed the record in this case, we do not find the hearing officer's determination to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.* Regarding whether the injury was a repetitive trauma injury, the hearing officer could find from the evidence that claimant sustained an injury over time from _____, to _____. We perceive no error. Regarding the carrier=s challenge of the determination regarding the _____, date of injury, the determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Carrier contends the hearing officer erred in determining that claimant timely reported her injury to her employer. Generally, a claimant must report an occupational disease injury to his or her employer within 30 days of the date the employee knew or should have known of the condition and that it was work related. Section 409.001(a), (c). The hearing officer determined that claimant reported the injury to her supervisor on _____, the day that she Aknew or should have known that the injury may be related to her employment.@ The hearing officer apparently believed claimant=s testimony that she told her supervisor on _____, after she had the sharp pain that day and that she complained about the tables. Ms. V denied that claimant ever said she had been injured. The hearing officer judged the credibility of the evidence and we will not substitute our judgment for his. After a review of the evidence in the record, we conclude that this determination is not against the great weight and preponderance of the evidence and we decline to overturn it on appeal. Cain.

Carrier contends the hearing officer erred in determining that claimant had disability from November 3, 1999, to the date of the CCH. The applicable standard of review and the law regarding disability is set forth in Texas Workers' Compensation Commission Appeal No. 950264, decided April 3, 1995. The evidence from claimant and the off-work slips from Dr. L support the hearing officer's disability determination. Carrier asserts that claimant did not have disability because she said she would have continued to work had her employment not been terminated on October 22, 1999. However, claimant said her work involved repetitive bending and moving of clothing. She said she continued to work in pain after _____, because she thought the pain would go away and because she needed to support her family. Claimant testified that the pain did not go away. Dr. L took claimant off work as of November 3, 1999.

The focus of the issue of disability is whether a claimant can obtain and retain employment at equivalent wages. Texas Workers' Compensation Commission Appeal No. 960474, decided April 19, 1996. The hearing officer could consider the continuing effect of the injury and the off-work slips in making his disability determination. After reviewing the evidence, we conclude that the disability determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

We affirm the hearing officer=s decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge